



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

RECENT CASES

ACCORD AND SATISFACTION—EXECUTORY ACCORD—PLEADING AN ACCORD AS A BAR TO THE ORIGINAL ACTION.—*REILLY v. BARRETT* (1917) 115 N. E. (N. Y.) 453.—As a bar to an action to recover damages for personal injuries, the defendant pleaded an agreement with the plaintiff whereby the latter agreed to receive \$200 in full satisfaction. Tender of the money and the plaintiff's refusal to accept it were alleged, but there was no allegation that the defendant's promise was to be received in satisfaction of the claim. *Held*, that this was a mere executory accord, not followed by satisfaction, and therefore no bar to the action.

The rule is that an accord without satisfaction is insufficient to bar the original action. *Schwartzfager v. Pittsburg, etc., Ry.* (1913) 238 Pa. St. 158; *Kennedy v. Maddox* (1914) 15 Ga. App. 684. A consideration is necessary to render an accord and satisfaction valid; but the amount of satisfaction is immaterial. *Decker v. Smith* (1916) 88 N. J. L. 630; *Beebe v. Worth* (1914) 146 N. Y. S. 146. In the case of a liquidated claim, payment of a less sum is not a consideration; where the claim is unliquidated, the acceptance of any sum is an accord and satisfaction of the whole claim. *Nassoioy v. Tomlinson* (1896) 148 N. Y. 326; *Hand Lumber Co. v. Hall* (1906) 147 Ala. 561. If the agreement is to accept a promise in satisfaction, without requiring performance of that promise, the promise itself is a good satisfaction. *Manley v. Life Ins. Co.* (1906) 78 Vt. 331; *Bell v. Pitman* (1911) 143 Ky. 521. To be available as a defence, accord and satisfaction must be specially pleaded. *Covell v. Carpenter* (1902) 24 R. I. 1; *Fogil v. Boody* (1903) 76 Conn. 194. It can not be set up under the general issue or a plea of not guilty. *Gosset v. R. R.* (1905) 115 Tenn. 376. The plea must allege that the matter was accepted in satisfaction; mere readiness to perform the accord, or a tender of performance, or even a part performance, will not do. *Hearn v. Kiehl* (1861) 2 Wright (Pa.) 147; *Cooke v. McAdoo* (1914) 85 N. J. L. 692; *Hancock v. Yaden* (1889) 121 Ind. 366. When pleaded, accord and satisfaction must be proved as any other agreement. *Phillips v. Graham Co.* (1915) 17 Ariz. 208; *Meyers v. Grantham* (1916) 187 S. W. (Tex.) 532. If pleaded by the defendant, the burden is upon him to show every element necessary to constitute it. *La Plata County v. Durnell* (1902) 17 Col. App. 85. Where the plaintiff in making out his own case is compelled to get rid of an accord, his evidence should go far enough to make out at least a *prima facie* case against it. *Browning v. Crouse* (1880) 43 Mich. 489. The earlier courts said that no action would lie for breach of an executory accord. *Lynn v. Bruce* (1794) 2 H. Bl. 317. Though recognizing that until executed an accord can be no bar to an existing action, the courts of to-day treat an executory accord as a bilateral contract for the breach of which an action may be brought.

G. E. W.